No. 03-582

IN THE

Supreme Court of the United States

AMRIT LAL,

Petitioner,

v.

G.E. CAPITAL MORTGAGE SERVICES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

A. Primary Question Presented for Review

(1) Whether the successful bidder at a second Sheriff's Sale of real property is denied due process because no notice was given that the first sale was unconsummated due to defects in the property?

B. Ancillary Questions Presented for Review

(1) Whether the failure to give notice to the successful bidder at the first Sheriff's Sale of the second Sheriff's Sale is a denial of due process to the successful bidder at the second Sheriff's Sale?

(2) Whether the Pennsylvania Real Estate Disclosure law is applicable to transfers of real property pursuant to Sheriff's Sale?

(3) Whether the Petitioner's liberty and property interests were violated by the refusal of the trial court and the Pennsylvania appellate courts to set aside the Sheriff's Sale of November 19, 1999?

CORPORATE DISCLOSURE STATEMENT

Respondent, G E Mortgage Services, LLC, formerly known as G.E. Capital Mortgage Services, Inc., is wholly owned by G E Capital Corp.

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COUNTER-STATEMENT OF THE CASE

1. The Form of Action

Respondent initiated the action below by way of Complaint in Mortgage Foreclosure. Petitioner purchased the foreclosed property at Sheriff's Sale on November 19, 1999. Thereafter, Petitioner sought to set aside the sale, which Petition was denied by the trial court. This Petition for *Certiorari* lies from the Pennsylvania Supreme Court's denial of Petitioner's Petition for Allowance of Appeal from the Order affirming the trial court by the Pennsylvania Superior Court.

2. Prior Determination of the Trial Court

On July 9, 2001, the trial court, the Chester County Court of Common Pleas, denied the Petitioner's Amended Petition to Aside Second Sheriff's Sale. On August 3, 2001, the trial court denied Petitioner's Motion for Reconsideration or Reversal of Order of July 9, 2001. On September 4, 2001, the trial court issued its opinion in support of its disposition of the Petitioner's Petition. On information and belief, the opinion of the trial court is not reported. A copy of the trial court's opinion is appended to the Petition for *Certiorari* at pages 17 - 19.

3. Prior Determination of the Pennsylvania Superior Court

On June 11, 2002, the Pennsylvania Superior Court filed its Opinion affirming the Order of the Chester County Court of Common Pleas denying Petitioner's Petition to set aside the Sheriff's Sale. A copy of the Pennsylvania Superior

Court's opinion is appended to the Petition for *Certiorari* at pages 11 - 16. On August 26, 2002, the Superior Court entered an Order, *per curiam*, denying Petitioner's application for reargument/reconsideration. A copy of the Superior Court's Order is not appended to the Petition for *Certiorari*.

4. Prior Determination of the Pennsylvania Supreme Court

On May 14, 2003, the Pennsylvania Supreme Court denied Petitioner's Petition for Allowance of Appeal, a copy of which Order is appended to the Petition for *Certiorari* at page 10. It is from this ruling that the instant Petition for *Certiorari* lies.

5. Chronological Narrative of the Case

On February 3, 1998, Respondent obtained summary judgment on its Complaint in Mortgage Foreclosure, against real property formerly held by the named defendants in the action below, which was subject to Respondent's mortgage. On May 13, 1998, Respondent filed a Praecipe for Writ of Execution on the foreclosure judgment. The real property was listed for the Chester County Sheriff's sale of September 18, 1998. An individual, Roger W. Blair ("Blair"), was the high bidder to whom the property was knocked down by the sheriff. Before closing on the bid, Blair notified Respondent that he would not close with the Sheriff because of the condition of the property. Thereafter, the Sheriff marked the first Writ of Execution as "Terms of Sale Not Complied With".

On April 29, 1999, Respondent filed a second Praecipe for Writ of Execution on the foreclosure judgment. Respondent's counsel thereafter issued notices of the second Sheriff's Sale as required by Pa. R. Civ. P. 3129.1, *et seq.* The second Sheriff's Sale proceeded on November 19, 1999, at which Petitioner was the high bidder. Thereafter, Petitioner advised the Sheriff that he would be filing a petition to void or set aside the Sheriff's Sale. To date, Petitioner has not closed with the Sheriff on his bid at the second Sheriff's Sale.

On November 29, 1999, Petitioner filed a Petition to Void or Set Aside the Sheriff's Sale, which was followed by an Amended Petition to Void or Set Aside the Sheriff's Sale. Thereafter, discovery proceeded.

On July 9, 2001, by Order, the trial court denied Petitioner's petition to set aside the second Sheriff's Sale. On July 19, 2001, Petitioner filed a Motion to Reconsider the Order of July 9, 2001.

On August 3, 2001, by Order, the trial court denied Petitioner's Motion for Reconsideration. On August 7, 2001, Petitioner filed his Notice of Appeal of the July 9, 2001 and August 3, 2001 Orders, only. Following briefing of the issues by the parties, on June 17, 2002, the Superior Court filed its Opinion affirming the trial court's Order denying Petitioner's Petition to set aside the Sheriff's Sale. On June 30, 2002, Petitioner filed an application for re-argument/ reconsideration, which the Pennsylvania Superior Court denied on August 26, 2002, *per curiam*. On September 24, 2002, Petitioner filed his Petition for *allocatur* to the Pennsylvania Supreme Court, which was denied on May 14, 2003. The instant Petition for *Certiorari* followed.

6. Brief Statement of the Pennsylvania Superior Court's Determination Subject to Review

The Pennsylvania Superior Court affirmed the trial court's denial of the Petition to Set Aside Sheriff's Sale. The Superior Court rejected Petitioner's position that the Sheriff's Sale should be set aside because of inadequate notice of the second sale to the successful bidder at the first sale, and allegedly deceptive and fraudulent conduct by Respondent. In so holding, the Superior Court reiterated the well settled rule that as to property purchased at Sheriff's Sale in Pennsylvania ". . . the rule of *caveat emptor* applies in all its force." (Opinion, *quoting*, *CSS Corp. v. Sheriff of Chester County*, 507 A.2d 870, 872 (Pa. Super. 1986), *appeal denied*, 514 Pa. 630, 522 A.2d 559 (1987) at page 16 of the Petition for *Certiorari*).

The Superior Court also rejected Petitioner's argument that his right to obtain discovery in support of his claim was improperly restricted by the trial court. The Superior Court found no evidence that the trial court abused its discretion in placing reasonable restrictions on Petitioner's overly broad discovery requests. (Opinion, at page 15 of the Petition for *Certiorari*).

REASONS FOR DENYING THE PETITION

A. The Absence of Any Federal Question Meriting Review

The United States Supreme Court may consider only final judgments concerning federal questions that are rendered by the highest court of a state in which a decision could be had. 22 *Moore's Federal Practice* 3d § 406.4[1][a]; 28 U.S.C. § 1257(a). To obtain review, which is discretionary with the Court, the judgment for which review is sought must be one of the following:

1. Calls into question the validity of a federal statute or treaty;

2. Finds a state statute repugnant to the Constitution, laws or treaties of the United States; or

3. Addresses a contention that a title, right, privilege or immunity is "set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under the United States."

22 *Moore's Federal Practice* 3d § 403.02[4]; *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178, 108 S. Ct. 1704, 100 L. Ed. 2d 158 (1988); *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 441, 99 S. Ct. 1813, 60 L. Ed. 2d 336 (1979); *Local 926, Int'l Union of Operating Eng'rs. v. Jones*, 460 U.S. 669, 675 n.7, 103 S. Ct. 1453, 75 L. Ed. 2d 368 (1983); 28 U.S.C. § 1257(a).

To the extent that Petitioner has raised a violation of due process argument in the Petition for *Certiorari*, Petitioner has nonetheless failed to raise any issue which is within the scope of the appellate jurisdiction of the Supreme Court with respect to review of state court decisions.

Petitioner's substantive due process argument has two prongs. The first prong is that the failure to provide him with notice of purported defects in the property prior to the sale of the property is a denial of due process. This argument is based on the untenable proposition that the Pennsylvania Real Estate Seller Disclosure Law ("Disclosure Law"), which is part of the Residential Real Property Act ("Act"), enacted December 20, 2000, and effective December 20, 2001, governs the November 19, 1999 sheriff's sale. Notwithstanding the fact that the Act and the Disclosure Law had not yet been enacted, much less become effective, when the sheriff's sale at issue took place in November, 1999, Petitioner mistakenly argues that the Act no longer exempts property sold at a judicial foreclosure sale from the disclosure requirements of the Disclosure Law. Therefore, Petitioner does not address any credible argument that his due process rights were violated because: (1) disclosure of the prior sheriff's sale was not made to him; (2) disclosure of the second sheriff's sale was not made to the defaulting buyer in the first sale; or (3) disclosure of physical defects in the property were not made to him.

The second prong of Petitioner's due process argument pertains to the absence of notice to the public and the prior defaulting buyer of the fact that this was the second time that the property had been taken to sheriff's sale. This argument is likewise meritless. As the buyer of property at sheriff's sale, Petitioner has no substantive or procedural

right to disclosure of the condition of the property. Petitioner's argument in this regard is based on inapposite state court decisional authority regarding the general right of the public to be informed of the ownership of property pending a tax sale. *See C. Everett, Inc. v. Ayers*, 22 Pa. Cmwlth. 422, 349 A.2d 514 (1975).

As neither of these issues involve a compelling Constitutional issue, this Honorable Court should not grant *certiorari*. As this Court has previously held in the matter of *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 721, 42 L. Ed. 2d 725 (1975), courts are not required to impose strict substantive due process constraints on foreclosure proceedings. Accordingly, Petitioner is not presenting a novel issue, nor one which warrants a follow up review. The rationale adopted in *Goss*, *supra*, is that the procedural rules governing foreclosure proceedings do not involve restriction of liberty or property, which is a prerequisite to a finding of a violation of substantive due process. On the contrary, the purpose of foreclosure rules is to provide a working mechanism to enforce a judgment. *Id.*

B. The Lack of Substantive Merit of the Issues for which Review is Sought

Notwithstanding the fact that Petitioner has failed to identify any federal question warranting this Honorable Court's review, Respondent addresses below the lack of substantive merit of Petitioner's position.

1. The Rule of *Caveat Emptor* Applies in All Its Force

Contrary to Petitioner's assertion, the seminal decision of the Pennsylvania Supreme Court on the application of the rule of *caveat emptor* to the purchase of real property at Sheriff's Sale *does not* limit the application of the rule to defects of title. *See Miners Nat. Bank of Wilkes-Barre v. Bowman*, 6 A.2d 286, 334 Pa. 534 (1939). In *Miners*, *supra*, the judgment debtor sought to have the Sheriff's Sale set aside because, prior to the commencement of the sale, the sheriff read a notice to prospective bidders that the property would be sold subject to a first mortgage held by Miners National Bank. The appellants complained that the notice that the property was being sold subject to the mortgage stifled bidding, and the purchase price for which it was sold was grossly inadequate, and amounted to a legal fraud. The Pennsylvania Supreme Court found that there was no merit to the allegation that the reading of the written notice concerning the lien of the first mortgage discouraged the bidding.

In addressing the *caveat emptor* rule, the Court wrote:

> On the contrary, in view of the inflexible application of the rule of *caveat emptor* to purchasers at sheriff sales (*Weidler v. Farmers Bank of Lancaster*, 11 Serg. & R. 134), the adoption of a practice, such as was here employed, expressly warning buyers of prior liens, necessarily enhances the security of transactions and operates to encourage bidding, rather than to stifle it.

Miners, *supra*, at 6 A.2d 288.

The use of the language by the Pennsylvania Supreme Court in the *Miners* opinion "the inflexible application of the rule of *caveat emptor* to purchasers at sheriff sales" indicates that the court did not intend to limit the rule at all, much less to limit the applicability of the rule to issues concerning quality of title, as is urged by the Petitioner.

Petitioner's reliance upon the Superior Court's opinion in *Juniata Valley Bank v. Martin Oil Company*, 736 A.2d 650 (Pa. Super. 1999) for the proposition that the rule only applies to defects in title, rather than physical defects of the property, is blind to the fact that the opinion is not only factually distinguishable from the instant matter, but is also focused on an issue of environmental regulatory legislation. The opinion does not seek to address substantive issues governing execution process.

In the *Juniata Valley Bank* case, the mortgagee bank, which purchased property at a foreclosure sale, brought an action against the prior land owner that operated a gasoline service station on the property, alleging misrepresentation, negligence, trespass, nuisance and violation of the Storage Tank and Spill Prevention Act, seeking recovery of costs arising from the presence of an underground storage tank and discharge of fuel oil on the property.

The trial court granted partial summary judgment to the land owner under the Storage Tank Act. The remaining issues were resolved at a bench trial for damages. The parties filed cross appeals to the Pennsylvania Superior Court. The prior owner asserted that the trial court had erred in denying its motion for summary judgment based on the following defense:

> As a sheriff's sale purchaser, the bank acceded to all right, title and interest possessed by the [mortgagor].

> Since the conveyance to the [mortgagor] took place on an "as is" basis, the [mortgagor] effectively released the [prior owner] from liability for any environmental contamination of the . . . property. [The prior owner] concludes that, as a matter of law, the bank is not entitled to relief because, as a foreclosure purchaser, it took the property subject to the [mortgagor's] waiver of any environmental claims against the seller.

Juniata Valley Bank, *supra*, at 736 A.2d 660.

The Pennsylvania Superior Court, in the context of holding that the prior owner could not relieve itself from environmental liability under the Act by contract, rejected the "as is" defense, finding that "The record simply does not support a finding that, as a matter of law, the bank took possession of the . . . property subject to the [mortgagor's] waiver of claims against [the prior owner]." *Id.* The court then addressed the *caveat emptor* rule as follows:

> It is true, as [the prior owner] points out, that a foreclosure purchaser steps into the shoes of the prior owner and acquires only such rights and the property as possessed by the judgment debtor:
>
> > A sheriff's sale is made without warranty; the purchaser takes all the risk, and rule of *caveat emptor* applies in all its force. The purchaser at such a sale receives all the right, title and interest in the property that the judgment debtor held and the rights of the purchaser become fixed when the property is knocked down to the highest bidder. If the debtor had

> no rights in the property at the time of the sheriff's sale, however, no title passes to the purchaser.

CSS Corp. v. Sheriff of Chester County, 352 Pa.Super. 256, 507 A.2d 870, 872 (1986) (citations and footnote omitted) *allocatur denied*, 514 Pa. 630, 522 A.2d 559 (1987). The principle, however, relates to the quality of title held by the foreclosure purchaser and applies in those cases where the absence of particular warranties of title precludes the purchaser from complaining of a defect in title. Traditionally, six warranties protect the purchaser against defects in the quality of title. *See, e.g.*, *Dobbins v. Brown*, 12 Pa. 75, 79 (1849); *see also* 20 Am. Jur. 2d *Covenants of Title* §§ 46-52. Three are breached, if at all, at the time of conveyance: the covenant of seisin, the covenant of the right to convey, and the covenant against encumbrances. The three remaining covenants, those of warranty, quiet enjoyment and further assurances, are breached, if at all, after the closing.

> All of the cases cited by [the prior owner] in support of its argument concern the quality of title conveyed at a foreclosure sale. For example, the *CSS* case involved an encumbrance on the title of a lot purchased at sheriff's sale. This court held that when the vendee purchased the lot, it acquired only those rights, title and interest in the property that the judgment debtor held. Accordingly, the vendee took title to the lot subject to a lien of a prior purchase money mortgage. *See, CSS*, 507 A.2d at 872; *see also, National Penn Bank v.*

> *Shaffer*, 448 Pa.Super. 496, 672 A.2d 326, 329-30 (1996) (addressing covenant against encumbrances; holding that sheriff's sale would not be set aside even though purchaser miscalculated bid based on mistaken belief sale had the legal effect of discharging mortgage); *DiCarlo v. Licini*, 156 Pa. Super. 363, 40 A.2d 127, 129-30 (1944) (addressing covenant of seisin and covenant of right to convey legal title when judgment creditor owns only a life estate in property; holding that regardless of the right purportedly transferred to purchaser at judicial sale, legal title did not pass to the purchaser because remainderman, not life tenant, possessed right to convey legal title).
>
> In contrast, the quality of the title is not at issue in the present dispute. Rather, Juniata Valley Bank seeks to enforce a statutory duty [the prior owner] owes to the citizens of the Commonwealth to rectify any harm it caused to the environment because of an underground-storage-tank release. The viability of the bank's claim depends on whether [the prior owner's] acts caused contamination on the property. Thus, the mere fact that the bank purchased the . . . property at sheriff's sale will not preclude it from relief.

Juniata Valley Bank, *supra*, at 736 A.2d 660-61.

The language in *Juniata Valley Bank*, *supra*, that the rule of *caveat emptor* applies only to defects in quality of title, is not based on any binding precedent, but appears to be *dictum* the Superior Court used, not for the purpose of limiting the rule of *caveat emptor* in Sheriff's Sales, but to get to its stated

goal of enforcing the Storage Tank Act, regardless of whether the party bringing the action purchased the property at sheriff's sale, or otherwise.

By contrast, *Miners*, *supra*, is precedential authority of the Pennsylvania Supreme Court which does not limit in any respect the applicability of the rule of *caveat emptor* to Sheriff's Sales, and, moreover, mandates that the rule be applied "inflexibly". Accordingly, Petitioner's argument that the applicability of the rule of *caveat emptor* to the purchase of real property is limited to defects of title is unpersuasive, and provides no basis for *certiorari* to be granted.

2. The Absence of Notice to Petitioner of Defects in the Property is Not a Denial of Due Process

Petitioner's argument that the failure to provide him with notice of purported defects in the property prior to the sale of the property warrants review of the Superior Court's holding is similarly unpersuasive. In that regard, Petitioner mistakenly argues that the Act no longer exempts property sold at a judicial foreclosure sale from the disclosure requirements of the Disclosure Law. Therefore, Petitioner can not address any credible argument that his due process rights were violated because of the alleged non-disclosures by the Respondent.

Pennsylvania's new Residential Real Property Act is contained in three separate sections, Chapter 71, General Provisions, Chapter 73, Seller Disclosures, and Chapter 75, Home Inspections. Chapter 71 preserves the exemption for sheriff's sales contained in the predecessor legislation, 68 P.S. § 1023. Petitioner's argument looks only at chapter

73, in the disjunctive, which is untenable. The entire Act, provides, in relevant part, as follows:

> Section 7101. Short title of part
>
> This part shall be known and may be cited as the Residential Real Estate Transfers Law.

Section 7102 is the definition section. Section 7103 is entitled "Application of part". This is the section that preserves the exemption found in the predecessor legislation, and provides in relevant part, as follows:

> **(a) General Rule.** - This part shall apply to and the terms "residential real estate transfer" when used in this part shall mean a transfer of any interest in real property located within this Commonwealth, other than a transfer described in subsection (b) that consists of not less than one nor more than four residential dwelling units, whether by sale, exchange, installment sales contract, leased with an option to purchase, grant or transfer of unit in a residential condominium or cooperative.
>
> **(b) Exceptions.** - This part shall not apply to a transfer:
>
> (1) Pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfer pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain and condemnation and transfers resulting from a decree for specific performance.

> (2) To a mortgagee by a mortgagor or successor in interest who is in default; to a beneficiary of a deed of trust by a trustee or successor in interest who is in default; by any foreclosure sale after default in an obligation secured by a mortgage; by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by an other instrument containing a power of sale; or by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure of who has acquired the real property by a deed in the real foreclosure.
>
> * * * *

Petitioner thus ignores these provisions of the Residential Real Estate Transfer Law, looking only to Chapter 73, which provides, in relevant part, as follows:

> **(a) General Rule.** - This chapter shall apply to all residential real estate transfers except the following:
>
> (1) Transfers by a fiduciary in the course of the administration of the decedent's estate, guardianship, conservatorship or trust.
>
> (2) Transfers of new residential construction that has not been previously occupied when . . .

Sections 7303-7315 go on to set forth the requirements of disclosure of material defects, the method and delivery of such disclosures, and limitations of liability of the seller, as well as the seller's affirmative duty to make disclosures. That Petitioner takes the duty of disclosure wholly out of context, *i.e.*, without looking at Section 7103, and ignoring the fact that the law did not become effective until 2001, more than two years following the November 19, 1999 Sheriff's Sale at issue, manifest the absence of merit to Petitioner's contention that the new Act imposes duties of disclosure of defects in the property to prospective purchasers at Sheriff's Sale.

Likewise, Petitioner's argument that the absence of notice to the public and to the prior defaulting buyer of the fact that this was the second time the property had been taken to Sheriff's Sale, is a due process violation is meritless. As the buyer of property at Sheriff's Sale, Petitioner has no substantive or procedural right to notice of any defects in the property. The argument to the contrary is improperly based on the decision of the Pennsylvania Commonwealth Court in *C. Everett, Inc., supra.* That opinion concerns an action to quiet title by purchaser at a tax sale brought against purchasers on a mortgage foreclosure Sheriff's Sale. There, the Delaware County Court of Common Pleas had invalidated the tax sale, and upheld the foreclosure sale purchasers' claim to superior title. In discussing the defects in the tax sale, the Commonwealth Court of Pennsylvania held:

> The defense of inadequate notice, however, is not only available to the [tax debtors] but also to members of the public who may have suffered because of the insufficiency of the public notice given, and not only does the law favor a clear chain

> of title, but such clarity is obscured where the public is not properly informed of the ownership of property pending a tax sale. Here, moreover, the defendants succeeded to an interest in the subject property and they certainly stand in a position to assert errors in a proceeding which clouds the title to the interest which they acquired.

C. Everett, Inc., supra, at 349 A.2d 517.

Here, Petitioner appears to seek to extend the general right of the public to be informed of the ownership of property pending a tax sale to a purported right of the public to be informed of the non-ownership of property due to default by a purchaser at a prior sheriff's sale. Thus, Petitioner urges this Court to make a huge leap in extending protections not previously extended to purchasers at a Sheriff's Sale, without any legislative or applicable decisional authority.

Moreover, both the Pennsylvania Superior Court and the United States Supreme Court have rejected the concept urged by Petitioner that courts must impose strict substantive due process constraints on foreclosure proceedings. *Scott v. ADAL Corp.*, 509 A.2d 1279, 1284, 353 Pa. Super. 288, *alloc. den.*, 523 A.2d 1132; *relying on*, *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975). The rationale adopted by the Courts is that the procedural rules governing foreclosure proceedings[1] do not involve restriction of liberty or property, ". . . a prerequisite to finding a violation of substantive due process." *Id.* On the contrary, the purpose of the foreclosure rules is to ". . . provide a working mechanism to enforce a judgment." *Id.* Although speaking to a different

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1. *E.g.*, Pa. R. Civ. P. 3129.1, *et seq.*

issue concerning a judgment debtor's rights with respect to seeking to set aside a Sheriff's Sale[2], the Pennsylvania Superior Court observed certain principles which are nonetheless applicable to this matter:

> . . . we cannot ignore . . . public policy considerations. In promulgating the Rules of Civil Procedure for enforcing money judgments, the Supreme Court balanced the need to provide for procedural safeguards for debtors with the need to provide a method whereby creditors could receive prompt and relatively inexpensive satisfaction of their debts.
>
> * * *
>
> If we were to make the burden of enforcing money judgments too onerous for creditors this could be reflected in loan policies. Creditors would become more reluctant to make "small" loans, *e.g.* first home loans, which in turn adversely affects the consumer, particularly the residential home buyer who needs a mortgage in order to purchase a home.

Scott, *supra*, at 1286.

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2. In *Scott*, *supra*, the Superior Court's opinion concerned a class action on behalf of judgment debtors seeking a ruling that since Sheriff's Sales of a debtor's property may take place for grossly inadequate prices, equitable principles dictate that all future sales be prevented unless a minimum price is bid. 509 A.2d at 1283. The Superior Court rejected this argument on appeal. *Id.* at 1286.

The type of burdensome notice procedure Petitioner seeks this Court to consider adopting as a substantive due process right, should *certiorari* be granted: (1) notice to prospective bidders of an unconsummated prior Sheriff's Sale due to purported physical defects in the property; (2) notice to the successful bidder at the first Sheriff's Sale of the second Sheriff's Sale; (3) notice of physical defects in the property akin to the disclosure requirements mandated by the Disclosure Law for non-exempt transfers of real property; are precisely the kind of onerous impediments to the enforcement of money judgments in foreclosure proceedings previously rejected by the Superior Court in *Scott* and the United States Supreme Court in *Goss*, *supra*. Therefore, Petitioner has identified no rationale for which this Honorable Court should review the opinion below of the Superior Court for due process considerations.

As Petitioner fails to identify any recognized due process right of which he was deprived in the proceedings below, this Honorable Court has no valid basis on which to grant *certiorari*.

3. Petitioner was Not Deprived of Procedural Due Process

Petitioner asserts that he was deprived of procedural due process because he was denied discovery of "vital . . . communications within the respondent's law department and communications between the respondent's law department and its outside lawyers." Petition at page 15. On its face, this argument lacks merit, in view of the fact the allegedly vital communications are necessarily privileged. Pa. R. Civ. P. 4011(c), 4003.3; Explanatory Note - 1978 to Rule 4003.3.

It is the well settled law of Pennsylvania that in the absence of a right to the discovery sought, there can be no violation of procedural due process if the discovery is not permitted. *Eastern Pa. Psychiatric Inst. v. Russell*, 77 Pa. Cmwlth. 390, 465 A.2d 1313, 1319 (1983). Petitioner has failed to identify that he was entitled in the proceedings below to discovery of information protected by the attorney-client privilege, and the record below manifests that adequate discovery was allowed by the trial court. Therefore, no violation of due process has occurred. *Id.*

As Petitioner has failed to identify why he might be permitted discovery of privileged communications, other than a bare assertion that the privileged communications are "vital," Petitioner has not established any deprivation of due process in the proceedings below which warrants the grant of *certiorari*.

CONCLUSION

For the foregoing reasons, the Petition for *Certiorari* should be denied.

Respectfully submitted,

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